

LeSeur closing arguments

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THE COURT: Judge LeSeuer.

MR. LESEUER: Ladies and Gentlemen of the Jury: This situation is one that is seldom encountered in law practice, but there is one thing that to my mind is very clear and I want to say it to the Court and to you ladies and gentlemen right now, in case I should get warmed up, which I hope not to do, and thus might overlook it.

I have stood before many jurors and tried many law cases and jury cases, but I want to say this, that I have never assisted in the trial of an action in which more liberality and patience has been shown by the Court than has been shown here; nor have I taken part in a trial before a jury who have given every indication of patience and careful interest in what was going on before them, and I want to thank the entire court for that.

Now, in some ways this case has been dry and in others it has been very interesting. But there is such a thing, to my way of thinking, as being altogether too serious. With conditions as they are in the world today, if I couldn't preserve a little sense of humor, I doubt whether I would have the courage to go on facing it. It is tough, very tough, and it isn't made any less tough when we indulge in vindictiveness, hatred, and so forth. I don't know whether any of you have considered these matters from the angle I have in mind at this moment, but it seems to me there are so many things that we all

know that we do not understand, that it sometimes makes us go off "half-cocked", as it were, to use a colloquialism, and therefore there are some things that ought to be very briefly explained to you before I go on to the argument of the case itself.

Now, I don't intend to refer any more to what anybody else has done or what anybody else proposes to do because the evidence has been well analyzed by Mr. Goldman and presented to you so that I don't think you will forget it in a hurry. But there is one thing that my friend over here, Mr. Anderson, said that I would like to correct, and I don't want it mixed up with the legal part of the argument. As I remember his language in the argument it was this: That this movement, this Socialist Workers' Party, was a cancer on the body politic. I don't know if that is his exact language, but that is the meaning that I got and I want to correct that impression because that isn't true. It isn't true at all and I don't think he meant it to be expressed that way because, as a matter of fact, what he should have had in mind is that it was an ordinary political "belly-ache" and that is all that it was. Now, if you take his word for it that it is a cancer on the body politic, then you have to use the highest treatment and would have to operate on it with a knife. The knife of hatred and poison of disunity and all of that stuff is too prevalent. We don't need any more of that than we have. We need to operate

Well analyzed
by Goldman

"The Knife
of Hatred"

on those things in the way the law and the constitution provide that we shall operate.

Now my colleague has mentioned something about international relations, and the benefits that come through not being isolationists, and the benefits from having cordial relations with other nations.

I can give you one illustration that fits in Minnesota. Whether it would in New York or not, I don't know, but I know it would here.

An Irishman and a Swede were arguing. They were on good relations but were just chiding one another. They met on the court-house steps, and the Irishman said to the Swede, "Ole, you wonder why I am digging into you Swedes all the time?" He said, "I have thought it over and I will tell you why. I don't know a single thing in the world that the Swedes ever did for the Irish."

"Well," replied the Swede, "that is where you don't understand; you are not well informed."

"Well," he said, "I would like you to tell me what the Swedes ever did for the Irish."

"The Swedes invented the wheelbarrow," replied Ole.

"Well, for goodness' sake, what did that ever do for the Irish?"

"Well," said Ole, "don't you know, Pat, if the Swedes hadn't invented the wheelbarrow the Irishmen would never have

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learned to walk on their hind legs?"

Now, that is a symbol of international relations carried on on the right basis. There was no fight over that; they didn't declare war. They are not fighting over their politics. And that is a symbol of the kind of thing that ought to be kept in mind, that we can take a joke and especially in politics should we be able to do that. When we get too serious and dwell only on the wrongs and not at all on the rights, we then get into difficulty.

Now I agree fully with this proposition that America is a modern miracle, unparalleled in time. America has been the leading country in progressing toward a more liberal and more democratic government. No government is wholly democratic; that can't be. No great nation can be wholly democratic. But America has made tremendous strides in that direction, and I want to impress on this jury what the reasons for that are and then prove that those reasons are facts to you.

But before I finish that, there is one item that ought to be mentioned. I understand from the examination which the Court made of you jurors, when you were qualifying as jurors to sit in this case, that very few of you ever indulged in judicial duty before, that this was the first case for several of you. Therefore, there are things that perhaps it won't be out of the way to bring to your minds.

Now, the Court is going to instruct you in accordance

with the law in the usual custom; he will read you the law, I have no doubt, just exactly what the law is that these defendants are charged with violating. He will tell you about that and he will give you the instructions as to the law, and it is a part of the functions of the Court that he do so, because the courts, and especially criminal courts, in American jurisprudence are divided into three sections. One section of it is, and the principal one, I presume it is proper to say, consists of the Judge who hears the trial and acts as the arbitrator or the controller of the proceedings. Another section of it is -- it is just as much an official part of the Court as the judge -- and that is the jury, in our system of jurisprudence. And the third part is that of the lawyers who conduct the case on either side.

The Court himself has sworn to support and obey and preserve the constitution. He has to do that. That is his obligation under oath. The lawyers are under oath to do the very same, no matter on which side of the case they are, to obey and preserve and support the constitution of the United States in the Federal Court and of the state if it is in a State Court. Now those are oaths that we have taken, that we should all of us comply with.

Then the jurors have taken their oath -- not just the same, but you have all testified you believe in the principles of American jurisprudence, in the constitution -- you believe in

that. And, therefore, the obligation rests on these three divisions of a trial court to stand by those oaths, to abide by them, to live up to them, and make them a part of your personality and a part of the judgment which you exercise in determining what your verdict shall be.

Now then, there is one thing that I think requires just a little further elucidation on that line, and that is the rules of law require that you take the law from the court -- not from what us lawyers say the law is. It is not our place to inform you on that; it is our place to argue on it. That is okay, but when it comes to accepting a statement of what the law is, you get that from His Honor. That statement does not mean that the court, this Court or any other court in America, can tell you to find a defendant guilty. This Court isn't going to do it; he isn't going to pretend to do it. He could tell you if he thought it was proper to do so, that you should not find them guilty or that you find a verdict of not guilty, but to tell you to find the defendants guilty -- no, no, he hasn't got that authority, hasn't got that power, and I will tell you why that is.

When juries first began in old England, the jurors were selected from the communities in which the transactions had expired, people that were supposed to know all about the facts, and the jurors would then gather and determine what the verdict should be, knowing the facts in advance, having their own

personal opinions, going on their own ideas of what the facts were.

Well, that didn't work so well, and, therefore, they finally passed laws on the old English statutes to the effect that those jurors who brought in dishonest verdicts should suffer criminal penalties as a punishment for bringing in verdicts that were not proper or in accordance with what they should have brought in. Well, who was to decide whether it was proper or not? They had to get other jurors to decide that, and so forth. They were in a terrible muddle and eventually those laws were abandoned and it finally developed to the present modern jury that is not supposed to know all about it, not supposed to have any opinions about it, but to take their information as they get it from the witnesses in the court, and what they know of their own common knowledge, not of the particular facts of the case, but common knowledge that everybody knows, and use their conscience, their common knowledge, and base the verdict upon the evidence as they get it from the witness stand. With a jury's findings on that basis, no court has a right to interfere when it comes to determining whether you will say guilty or not guilty.

The Court can advise you about it but cannot direct you. That is your function; it belongs wholly and solely to the jury to perform that function. Now then, there is one technical objection that I want to make here that has not been very much in

Modern
Juries

this court at all. I don't mean to repeat what has gone before. Mr. Goldman has handled that and handled that to a point where it doesn't require any more handling, in my hands at least, and, therefore, I am not touching any of that. But there is this point here that I want to call to your attention. It is this -- in this indictment that was brought against these defendants, and I want to read the charging part of that to you. It reads as follows:

"The Grand Jurors of the United States of America within and for said District" -- that is, this District -- "in the name and by the authority of said United States of America, upon their oaths present that from and before the 16th day of July, 1938, and continuously thereafter until the day of the filing of this indictment, in the Cities of Minneapolis and Saint Paul, in the State and District of Minnesota, and within the jurisdiction of this Court, and in the City of Chicago, State of Illinois, and in the City and State of New York, and elsewhere" -- and then the names of the defendants are in here -- "hereinafter referred to as 'defendants', then and there being, did unlawfully, willfully, knowingly, and feloniously conspire, plan, combine, confederate, and agree together and with each other, and with divers other persons to the Grand Jurors unknown, herein after referred to as "co-conspirators", to overthrow, put down, and to destroy by force the Government of the United States of America, and to oppose by force the authority thereof."

That is the charging part. Now I hope you remember that. I don't suppose the Court will let you take this with you to the jury room, but if he does not, remember that is the charging part and that is what is charged here against these defendants.

Now, let us go a little further: "And the Grand Jurors do present that as part of said conspiracy and as ways and means by which it would be accomplished, the following steps, among others, were to be and were taken, all in the City of Minneapolis, State and District aforesaid, and elsewhere within the period of time alleged in this indictment:

"(1) The defendants, who were officers, leaders, active members, and in control of a certain political party or organization known as the Socialist Workers' Party, which said party or organization was composed of a large number of persons, the exact number being to the Grand Jurors unknown" -- and here comes the part; now what did they do? Now this is what it says: "did procure, induce, influence, incite and encourage the members of the Socialist Workers Party, and divers other persons, whose names are to the Grand Jurors unknown, to join with them to bring about the overthrow by force of the Government of the United States, and the destruction thereof by force, and the opposition by force to the authority thereof."

Now there you have it, and the same thing that I am going to remark on now applies to the second Count also. Now what is meant by that? Under the rules of criminal law, an indictment

for a felonious offense, penal offense, such as this is if they are convicted, the law requires that that shall be definite, and shall be positive, and shall be certain, and shall be clear as to what they say. Now, what do they say? They say that this is a conspiracy to overthrow the government by force. They say what they did under this conspiracy is to induce the members of the Socialist Workers' Party, just as it reads here, to join with this conspiracy. That is in the charging part of the indictment.

And now what do we have before this jury today? Nothing but the documents of the Socialist Workers' Party. So that there isn't a word before you ladies and gentlemen of this jury that charges them directly, in the way of evidence, of having joined this conspiracy.

They say that these documents show that the Socialist Workers' Party conspired. They don't allege that the Socialist Workers' Party conspired; they allege that these people who they name were going to induce and did induce the Socialist Workers' Party to join their conspiracy, -- and they don't ever say what that conspiracy was or offer a word of proof to establish it except the documents of the party itself. Now that is all I have to say about that.

Now I want to go on a little further with some matters here that to my mind are absolutely vital. Ladies and gentlemen, I have sat here through this long trial and I have watched this

Good
Point!

from the same standpoint as you ladies and gentlemen have. I haven't taken any part in the proposition, so that I was able to take a good survey of it. I know just how tiresome it sometimes gets when you are not active. You just have to sit and take it. I appreciate all that. But as the trial has been progressing I have thought about some things in the case and have had the opportunity to look up some things about it.

Now then, we have here involved in this action a question legally and properly raised, charging that this prosecution is illegal; that it is in violation of the First, Fifth, and Sixth Amendments, and the Fourteenth Amendment, we might add to that, to the Constitution of the United States. And how we came to have those amendments to the Constitution of the United States is a matter of interest.

When America achieved its independence from the domination of the British Empire, a lot of the people who came here, and especially from the British Isles and the Dominions of Great Britain at that time, came to escape persecutions -- a lot of them on religious grounds, and also there were other grounds that they complained about, that they were suffering from, from the injustices they suffered from kings and emperors and dictators in other lands. They came to America.

Now the popular conception of that situation is that they came here to escape all that. That is true of some of them, but as a matter of fact, most of them came to achieve wealth where

This Prosecution
is illegal

it was much more accessible in this new land than it was in their own countries -- a legitimate ambition, by the way -- and others of them came here to escape the religious persecutions.

Now, there is one lesson that we ought to learn from that, while we are talking about constitutions and constitutional rights, the chief persecutions that involved the Anglo-Saxon race, the English speaking race, as well as the Germans and other European nations, were because of controversies between the Roman Catholics and the Protestants. Now when the Catholics had the upper hand in Europe and were taking steps toward carrying out their propaganda against the Protestants, the Puritans came over to New England. And what do you suppose they did when they got all this liberty in this land? They started witch-hunting and witch-burning and passing laws, even to the death penalty, for people who refused to join their religious organizations.

Now, that is just how much understanding that they had of things. We need to understand as well as to know that. Mind you, it was just a question of who was on top. And there aren't any distinctions to be drawn between those different faiths and different religions as they persecuted each other in those days. It was only after thirty years of war, or more, in Europe that these two great religions can today live together side by side without any of this going on. And how have they learned it? They have learned it by having come to the under-

standing, after the vicious ways they used each other for centuries, that it doesn't pay, that it is better to let everybody have their own ideas about these things, and they have managed it so that we don't have those religious wars any more, and we certainly don't need them any more.

Now, with reference to our Constitution, how did we get those Amendments? We got those Amendments because those fathers of our Constitution realized and appreciated the sacredness of humanity as individuals, and they wanted protection from those things. While the iron was hot in those moulding days, when they were building and moulding the structure of the new government, they wanted it built so that these things should be protected against and prohibited in an effectual way.

Now then, I want to read to you a description of that situation, what they did accomplish, by a very, very noted jurist, one of the greatest that America has produced, and if we could only understand that and live up to it, it would ease the way for all of these different "isms" to have their say-so. They ought to have it; the law provides that they are entitled to it. I don't have to adopt it, you don't have to adopt it, and nobody has to adopt it that doesn't want to. There is no compulsion about it. They are right about that, they haven't any right to conspire to overthrow the Government of the United States and take any overt acts towards it. They can think about it if they want to, if they think that is worth while,

and we have no right to object under the law. But they have no right to take any steps towards it, and I say that they haven't done so.

But now, here is what Judge Joseph Story says about this. He says, "Who can preserve the rights and liberties of a people when they shall be abandoned by themselves? Who shall keep watch in the temple when the watchmen sleep at their post?" Who is he talking about? He is talking about the pillars of government on which liberty rests in America; the executive department, congresses and legislatures, that is what he is talking about. "Who shall call upon the people to redeem their possessions and revive the republic when their own hands have deliberately and corruptly surrendered them to the oppressor and have built the prisons and dug the graves of their own friends? The dark picture, it is to be hoped, will never be applicable to the republic of America. And yet it affords a warning, which, like all the lessons of past experience, we are not permitted to disregard. America, free, happy, and enlightened as she is, must rest the preservation of her rights and liberties upon the virtue, independence, justice, and sagacity of the people. If either fail, the republic is gone."

Now what has made America great? Nothing but the absolute freedom of the initiative, freedom of the minds of all Americans so they could develop every bit of the mental ability which they have, and translate that into acts of accomplishment

without the hindrance of a dictatorship, or the monopolies of the old world.

Now then, here is what he advises about that: "Let the American youth never forget that they possess a noble inheritance, bought by the toils and sufferings and blood of their ancestors; and capable, if wisely improved and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected," he says, "by architects of consummate skill and fidelity, its foundations are solid, its compartments are beautiful as well as useful, its arrangements are full of wisdom and order, and its defenses are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly or corruption or negligence of its own keepers -- the people. Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall when the wise are banished from the public councils because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them."

That is from Judge Story's work on the Constitution of the United States, and if ever a true word was said, he said it. Constitutions do not continue and perpetuate themselves. They are based upon the intelligence and the integrity and the virtue

of the people over which they are supposed to rule.

Now then, what does the Amendment say? It says that free speech, a free press, free assembly, and right to petition the Government for redress of grievances -- that is the First Amendment in substance. Now then, it says that, and it doesn't say if the Court permits you; it doesn't say if other political parties permit you. It says that is an inalienable right that belongs to the people themselves.

It is different when you speak of "sovereignty". There is another thing that is a little confusing and that I think needs a little elucidation. For instance, we talk of the "government". It has been talked about in this case right straight through, and in ninety per cent, at least, of the cases where government itself is talked about, they haven't meant what they said, either side.

What is government in America? The Government in America is the supreme law of the land. What is that? The Constitution, that is the supreme law of the United States, and that is the government. What are they kicking about? Things that the administration does, that is what the Trotskyists are kicking about. Sometimes what the courts do, they kick about that. But those are administrations, not the government.

It is different when you talk about governments in the old countries, where they had a king, and all the sovereignty was vested in an individual. That is different -- the govern-

free speech
etc.

ment and the king were the same thing; government and the dictator are the same thing. Now if anybody thinks that the Trotskyists, whom I have the pleasure of assisting in defending here at this time, have no way of distinguishing between the governments in the over-run countries of Europe and ours, and no appreciation of that, you are making a mistake. They do; they do understand that part of it. They know -- they know that if this was in one of the over-run countries that Hitler is presiding over today with his dictatorship, if those defendants who were charged with such things as these people are charged with today before you, how would they come to court? They would come in baskets, with their head in one basket and their body in another.

But here in the United States of America, by virtue of the constitutional system, they do not come for trial in that kind of a condition. They must first be convicted before any penalties of law can be applied to them. Not so where they have the dictator!

Now then, when you come to distinguish for the benefit of trying to understand what these radical parties mean in America -- and God knows they are needed; yes they are -- but if you want to understand what they mean, realize that when they are talking about these things that so and so and so has not been done and should not be done, that the Constitution is violated here and there and so forth, it is not an attack on the

Government of the United States.

That is impregnable from without. It is impregnable as far as any reason can be applied to it now, for this reason, that if it is necessary to amend the Constitution, the means for the amendment of it, to settle these property questions, is wide open -- when the majority desire to do it. Everybody has a right to propagandize for that if they want to. Now then, let's see. There is another misapprehension made. Don't confuse our administration with government, and then the next one is property.

How much misapprehension goes with that? I think everybody in the United States ought to understand the moral basis of property. Counsel mentioned different kinds of property -- typewriters and tables and chairs and court houses and things like that. But there is a technical meaning to property that is not covered by that illustration. Ownership, what moral sanction has that? Where does it come from? Who makes it my property or your property?

There are two natural sanctions that no man ever made. There are certain laws that no man can make or break, to which the whole human race is subject. A great English jurist put it in these words -- I quote freely and I wish I could quote it exactly all the way. "These natural laws no man can make or break. No man has authority, no group of men, and no government has authority to make or break them. They are bound into the

very frame of the universe and out of that we cannot stir. The natural laws that govern the universe, of which we are an infinitesimal part, are not subject to changes by our wealth."

Now then, there are two natural sanctions or laws governing the ownership of property. The first one, that has been exercised time without number, is that "He shall take who has the power and he shall keep who can." That is the first natural sanction. There is another one that "He who creates wealth shall own it."

They are both natural sanctions. The first one has been the basis of two-thirds of the troubles of the world, but it is still in vogue and still lived up to, everywhere except as it has been restrained in view of restraints imposed by law on the acquisitive instincts natural to humanity.

Now, what is ownership? Ownership is the dominion over property to the exclusion of interference by anybody else, while you use, or keep, or sell, or do anything you please with that property. All the rest of the titles -- mortgages, corporate franchises, the city, the village, railroads and other public things like power and light, notes, bills of exchange -- all those paper titles that go with deeds to land and so forth, all of those paper titles, how were they made, how did they come into existence? They are sanctions made by men, by legislative enactment in this country and by dictatorial edict in European countries now. All they have to say is "It is mine" and take

it and they have got it, but we have legislative enactments that say when and how you shall own these things.

We have all these paper laws that govern the ownership of property here in America today. Those are sanctions to the ownership of property. At least 99 per cent of all property in America is owned by those artificial sanctions made by men to rule and to govern their own actions in dealing with each other. Now that is true; nobody can argue about that. Now then, if men have a right to take from other men their earnings without giving them full satisfaction for it, give them a title that they can pass on to their children, or grand-children, or great grand-children in a crooked or any other way morally, but not crooked legally, can't you understand, ladies and gentlemen, that the same authority to do that consists in that same authority to take away those titles that have been wrongfully used? Haven't they got the same sanction to do that as they have to create it in the first place? What men have made, they have a right to unmake -- by the same law and the same sanction, same authority to do it.

So that when we find these radical parties quarreling about monopoly and so forth and what they propose to do, remember what the natural sanctions are, remember what the artificial sanctions are, where they came from, and whether or not these people propose to use the same sanctions to undo what has been done. They have the same right, certainly.

Now then, let us take just a little look further at property as the basis for these disputes that come up. We have in America here, regardless of the sixty families, or sixteen families, or what not -- I don't know about statistics. I know that some statistics don't lie and others do. I haven't got very much confidence in statistics, any that I know about. I don't care whether it is sixteen or sixty families that control eighty per cent of the wealth, or what it is. But I do know from actual experience in large corporate business that there is a tremendous percentage of the wealth of America in monopolistic hands today.

Farm after farm, hundreds of farms, thousands of farms in Minnesota alone are taken away from the ownership of these farmers, done by these legal sanctions that we talk about. That is the way it is done, and I know that if that process is allowed to continue for another fifty years, that we will have very little left in this country that is not monopolized. The opportunities are scarce today for the youngster moving out into life, expecting to marry and become a substantial citizen, but they will be a hundred per cent more scarce unless we drive a different road than we have been driving with reference to those property rights.

We know that is coming and it doesn't depend on any "ism" to establish the fact. Good Lord, I sometimes think that if I had one wish to make about improvements in conditions, that if

I could only take every "ism" -- I don't care where it comes from or whose "ism" it is -- if we could wipe out all the "isms" into one pile of "wasms" and start over again, dealing with each other as human beings, that it would be the greatest blessing that could be bestowed on this country. It does seem to me that all of the so-called parties, the Republican, the Democratic, and all of the others are in the same kettle, to my way of thinking, finding ways to disagree instead of ways to unite for the common welfare, and then spending life-times arguing about the differences we are able to dig up and to find, to throw at each other, and cause enmity and spite and hatred instead of unity.

Here is this prosecution, for instance, just as a sample, and I am not going to mince words about it. This is the worst time in the world with this emergency staring us in the face that they could dig up an issue like this, to try and brand a large section of these people with a crime that anyone with their common-sense knows that they didn't have the slightest thought of indulging in, trying to twist that out of their documents. Nothing could be further from common-sense than a prosecution like this at this time. There is no excuse on the part of Mr. Anderson or others who brought that indictment, the Grand Jurors who presented the indictment, that they didn't know better than to believe that there was any danger to the American Government in this business, with a Party of 2,000 members.

And just as you have seen right here in court, a large

percentage of their members, whether you believe they were perjurers, as Mr. Goldman told you, or whether you believe they were honest or dishonest, still they go into the Party and come out, go in and out, and still you expect that Party to grow into a menace to the people of the United States, to the Government of the United States? Nonsense.

Now here is something that I wish to give you. I wish I had the ability to make it my language but I haven't, and I will have to read it to you. Remember now that the Constitution of the United States is the supreme law of the land. No court has the right to over-ride it, no jury has the right to ignore it, and no citizen has the right to violate it. When President Lincoln was a candidate for office the first time, he was charged with all kinds of things that they like to bring up today about different radical organizations. The Trotskyists don't have a monopoly on that by any means. There are other organizations that are held in about the same esteem by those that don't understand. Now you don't have to be a Trotskyist to believe that they are entitled to the protection of the law, the same as anybody else.

You should believe and understand this, that when you surrender to persecution, or to a violation of constitutional or individual rights, any person, no matter who he is or to what organization he belongs, you are surrendering, to that extent, your own liberty. What has happened in Germany where they have

surrendered to their racial prejudices? Oh, anybody can hate the Jews and chase them out of Germany, but what happens to the Germans when they chase the Jews out? What happens? We have got a good sample of what happens. There it is. You can't displace a force by force without still being governed by force. That is all you have got left. You use one force to chase another out, but you are still governed by the same thing.

But here is what Lincoln said when he was campaigning for the presidency the first time. They charged him with being an enemy of the Republic because of the charges which he was making, in behalf of his candidacy, against slavery, -- or rather, it wasn't against slavery then, because they hadn't come to that point. The slaves were liberated as a war measure and it was not an issue until the second campaign.

He said this, at Edwardsville, Illinois, in 1858: "Our reliance is in the love of liberty which God has planted in us. Our defense is in the spirit which prizes liberty as the heritage of all men, in all lands everywhere. Destroy this spirit, and you have planted the seeds of despotism at your own doors. Familiarize yourself with the chains of bondage, and you prepare your own limbs to wear them. The people of these United States are the rightful masters of both Congress and courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

That is right at the very base of this whole business.

Now then, what does free speech mean? We have very good guidance on that, thank the Lord. Here is a quotation -- and, by the way, while I read these, don't overlook the fact that the wording of the Constitution is not open to construction. It is definite; it is clear; it is specific. Anybody who has learned to read knows what that means. There shall be no law abridgment.

"But while we are quoting these opinions, it should be remembered that principles are greater than men. Freedom of speech and of the press rests not upon opinions, however high their source, but upon the claims of inalienable rights, and the guaranties of the Constitution. Men may go wrong, but right principles are as abiding as the everlasting hills, and as strong as truth itself.

"It may be asked in this connection, Is the press to be absolutely free? Are men who may be traduced and slandered to have no redress? We reply, The press must be absolutely free, but not irresponsible. Men must be held responsible for what they speak, write and publish, just as they are held responsible for what they do. But our laws against libel are ample. Under them men may be mulcted in financial penalties or even imprisoned for the abuse of the liberty guaranteed them under the Federal Constitution and State constitutions, but there can be no censorship, and no persecution for opinion's sake, whether religious or political. Only in so far as our Constitutional guaranties of freedom of expression are respected and maintained

can we as people justly claim to be free." That is from the Review and Herald Publishing Company on "Freedom, Civil and Religious."

Here is one from a man who is no longer able to talk to us directly: "In this struggle of democracy, in this crusade for free institutions, let us hold fast among ourselves to those great underlying principles of freedom and liberty without which we may be a republic in name, but could never be one in fact. Without an unfettered press, without liberty of speech, all the outward forms and structures of free institutions are a sham, a pretense -- the sheerest mockery. If the press is not free; if speech is not independent and untrammelled; if the mind is shackled or made impotent through fear, it makes no difference under what form of government you live, you are a subject and not a citizen. Republics are not in and of themselves better than other forms of government, except insofar as they carry with them and guarantee to the citizen that liberty of thought and action for which they were established." That is from a speech by Senator William E. Borah against a Repressive Press Bill, reported in the Congressional Record of April 19, 1917. He didn't hesitate to speak up.

Then again, the Sedition Law that was supposed to be passed in 1798. This was assailed and was practically the same thing that we have today, Count One of the indictment. "This act was assailed with great vigor by the opposition, and was

deplored by some of the best friends of the administration. Hamilton deprecated the measure. He wrote a hurried note of warning against the Sedition Act (June 29, 1798) to Walcott, while the bill was pending, saying: "Let us not establish a tyranny. Energy is a very different thing from violence. If we take no false step, we shall be essentially united; but if we push things to the extreme, we shall then give to parties body and solidity." He was writing about radicals that were writing in those days, and they wanted to stop this radical talk. And then he says, "If we take no false step, we shall be essentially united; but if we push things to the extreme, we shall then give to parties body and solidity."

Then again from the Annals of Congress, "Congress is about to pass such a law. For it is vain to talk about the 'licentiousness of the press,' the prohibition is express, 'shall pass no law to abridge,' and so forth. And as to what gentlemen called 'the licentiousness of the press,' it was so definite a thing, that what was deemed 'licentiousness' today by one set of men, might, by another set, tomorrow, be enlarged, and thus the propriety of the information to be given to the public would be arbitrarily controlled." That was a speech by Mr. Nicholas of Virginia, taken from "Annals of Congress", July 10, 1798.

"It was thirty-five years before freedom of the press was again attacked in this country. In 1835 President Jackson recom-

mended the passage of a law that would keep certain literature out of the mails. It was attempted to make the proposed measure a party question, but without success." Senator Morris of Ohio said: "I follow party where the Constitution and principle lead; and when men attempt to take their place, I halt." Congressional Globe of April 14, 1836.

"The American Constitution" -- this is one of the greatest historians in America who says this -- "The American Constitution, in harmony with the people of the several states, withheld from the federal government the power to invade the home of reason, the citadel of conscience, the sanctuary of the soul; and not from indifference, but that the infinite Spirit of eternal truth might move in its freedom and purity and power." George Bancroft, the historian.

Now, going back a bit, here is a very short quotation but it shows what George Washington, the Father of his Country, had to say about government: "Happily, the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection shall demean themselves as good citizens."

Now, even with reference to the statutes against treason that are on the books today and have been on the books for a century, they are careful to say that when a person is charged with treason, it has got to be shown what he did. There has got to be an overt act before you can charge him with anything.

He may think what he pleases and he may say what he pleases, but until he has committed an overt act looking toward the accomplishment against the government, you can have no charge of treason in the United States.

Now what have we got with the Smith Act, Count Two. I want to talk to you about that later. Here are a few quotations from the man who perhaps did more than any other one man to establish rights for the individual, Thomas Jefferson. He says:

"Whereas, Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness." That is from the Virginia Law of 1785.

He said further, "I do not like, first, the omission of a bill of rights, providing clearly, and without the aid of sophisms, for freedom of religion, freedom of the press, protection against standing armies A bill of rights is what the people are entitled to against every government on earth." That is from "The Jeffersonian Cyclopaedia."

Again, "The first infringement upon the rights of conscience should be jealously opposed. 'Eternal vigilance is the price of liberty.' The greatest American orator said, 'Liberty, the greatest of all earthly blessings -- give us that precious jewel, and you may take everything else.'"

"I have sworn upon the altar of God eternal hostility

against every form of tyranny over the mind of man."

That is what I condemn in this Smith Act. It is nothing but tyranny over the mind of man. If men have to hatch those things, let them hatch them to show their horns in a form which entitles us to say that a crime has been committed.

Then again Jefferson makes a very wise statement in a letter to Francis W. Gilmer on June 7, 1816. Gilmer was a member of the legislature. He says this to him: "Our legislators are not sufficiently apprised of the rightful limits of their power; that their true office is to declare and enforce only our natural rights and duties, and to take none of them from us. No man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of the society; and this is all the laws should enforce on him; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third. When the laws have declared and enforced all this, they have fulfilled their functions, and the idea is quite unfounded that on entering into society we give up any natural rights."

Now, those are things that are so meteoric in American history that there aren't any reasonable men that would argue with them. They are facts of history on which this country stands. They are at the base of the reasons why America has

become great. They show forth reasons why America will cease to be great if we abandon those things.

Now here is one I don't want to miss: "True liberty of speech and of the press consists in being free to speak, write, and print, but being, as in the exercise of other liberties, responsible for the abuse of this liberty; and whether we have abused this liberty or not, must, like all other questions of right, be left to the decision of a court and jury. This is the universal test by which the exercise of all our rights must be tried."

John Milton, the poet, says this: "Give me liberty to know, to think, to believe, and to utter freely according to conscience, above all other liberties."

Here is Sharswood's Blackstone: "Civil liberty, the great end of all human society and government, is that state in which each individual has the power to pursue his own happiness according to his own views of his interest and the dictates of his conscience, unrestrained, except by equal, just, and impartial laws."

Now, we have some very ancient words here. I have sometimes thought as I looked over this case, and was thinking it over and wondering about it, that I would ask District Attorney Anderson or Assistant Attorney General Schweinhaut what in thunder has happened in this case, why is it with all the talk and all the proof we have here against Karl Marx that we haven't

got him indicted? In this case they might want to amend the indictment and take Karl Marx into the jury. But I want to warn the jury, don't do it. No matter what they ask you to do, don't do that.

Now here is one that is new and we don't have to go very far back for this at all -- in *De Jonge v. Oregon*, 299 U. S. 353, Mr. Chief Justice Hughes, not long before he left the Supreme Court Bench said this: "The greater importance of safeguarding the community from incitements to the overthrow of our constitutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsible to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the republic, the very foundation of constitutional government."

Now that is a very recent case. I thought perhaps I had the date here, but I haven't. Now there you have the theory by people who know, people who have made a study of those things. Just a few more citations concerning these things, and I am going to call it square. This is following the case that was tried in New Jersey and I am quoting now from quotations made by the Judge who tried that case. He puts them into his memorandum and I got them out of the law-book. He says: "The true meaning

of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for, as Baghot points out, once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom." That was quoted from Professor Chafee.

"There is also a social interest in free speech as a guarantee of political efficiency and an instrument of progress; and this social interest must be balanced against the social interests in repression. * * * Another doctrine for the interpretation of the use abuse theory, the test of clear and immediate danger is suggested in determining which, not only the words uttered, but the situation in which they are uttered must be considered. * * * Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command." There is no such emergency here at this time, and furthermore the

country is full of radical organizations who are just as bad, from the standpoint of the prosecution, as this.

You can go back in the old Socialist constitutions and platforms and you find just as savage attacks on the administration as you find in these books here. Nobody has ever quarreled about it though, because for some reason they didn't care about that. And they have no more reason for caring now, not a bit more.

"As the history of free speech is the outgrowth of its philosophy the latter takes precedence. Furthermore it can best be gathered from wiser and more eloquent pens. We are arranging the quotations under headings that seem to us appropriate to the logic of the thesis."

"It is not the law that is to be found in books that constitutes -- that has constituted, the true principle of freedom in any country at any time. No, it is the energy, the boldness of a man's mind which prompts him to speak not in private, but in large and popular assemblies, that constitutes, that creates in a state the spirit of freedom. This is the principle that gives life to liberty; without it the human character is a stranger to freedom."

This again from the Judge: "Since, therefore, no one can abdicate his freedom of judgment and feeling; since every man is by indefeasible natural right the master of his thoughts, it follows that men thinking in diverse and contradictory

fashions cannot, without disastrous results, be compelled to speak only according to the dictates of the supreme power,' Spinoza."

Again, "The press must be free; it has always been so and much evil has been corrected by it. If Government finds itself annoyed by it, let it examine its own conduct and it will find the cause -- let it amend it and it will find the remedy." And there is common sense in that, too. Government has the right to remedy these things. Why don't they do it?

"The only security of all is a free press. The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to." Thomas Jefferson."

"With effervescing opinions as with not yet forgotten champagnes, the quickest way to let them get flat is to let them get exposed to the air." Mr. Justice Holmes."

"And though all the winds of a doctrine were let loose to play upon the earth, so Truth put in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?" John Milton."

"If prosecution is unnecessary in the defense of truth, it has a fearful efficacy in preventing men from discovering it; and when it is so employed, as infallibility does not exist among mankind, no man can assuredly decide. For truth

is scattered far and wide in small portions among mankind, mingled in every system with the dross of error, grasped perfectly by no one, and only in some degree discovered by the careful comparison and collation of opposing systems.

And that is what we are objecting to here, that these prosecutions, if they should continue, and as they have said they intended to, will absolutely throw tremendous obstacles in the way of truth.

Now then, Wendell Phillips, this is what he says about it: "If there is anything in the universe that can't stand discussion, let it crack." Let it go if it won't stand the examination of truth and discussion.

"The man who will not investigate both sides of a question is dishonest." Abraham Lincoln."

"To court discussion, is of course, no certain proof that we are right, but to be free of it, is conclusive indication that we suspect at least we may be wrong." Abraham Lincoln."

"The community which dares not protect its humblest and most hated member in the free utterance of his opinions, no matter how false or hateful, is only a gang of slaves." That is by Wendell Phillips.

"No good government has anything to fear from a paper shot." Oliver Cromwell." A good government, what has it to fear from what anybody says about it.

"It is the ancient and constitutional right of this people to canvass public measures, and the merits of public men. It is a homebred right, a fireside privilege. * * It is not to be drawn into controversy. It is as undoubted as the right of breathing in the air and walking on the earth. Belonging to private life as a right, it belongs to public life as a duty. This high constitutional privilege, I shall defend and exercise in all places in time of war, in time of peace and at all times. Living, I will assert it." Daniel Webster."

"The sun might as easily be spared from the universe as free speech from the liberal institutions of society." Socrates."

"Repression of full and free discussion is dangerous in any government resting on the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness." Cooley."

"The very idea of a government, republic in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." Mr. Chief Justice Waite, in *United States v. Cruikshank*, 92 U. S. 542."

"It is the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed

to the holding of opinion or to mere intent in the absence of overt acts." Charles Evans Hughes on the ouster of the Socialist assemblyman, at Albany, New York, January, 1920." That is not so old.

"Finally let us say that this court happens to be as much or more personally allergic to the mentioned infection as the defendants or their constituents. We think it economically unworkable and worse than that we think that the methods seemingly pursued in its propagation are abhorrent to all true believers in democracy."

Now, gentlemen, you have been kept here late by me and perhaps without much benefit. There is just one more that I want to call your attention to if I can find it readily, and then we will call it "quits", one by a person who will never talk to us again, but who has talked a good deal. It isn't as impressive as many of those that I have read, but it is more recent. It was a statement made by President Wilson and the gist of it was this: That the thing which we love and respect and admire in America more than any other one thing is that any man living in our midst has the full, complete, and untrammelled privilege to speak his honest opinions in his own way, own time, and own place, recognizing only the same rights in other people as he claims for himself; and that the weak spot in the American people today is that we don't have enough knockers and kickers to object to the violations of these supreme principles of

freedom that have been granted to us through the blood and toil of our ancestors; that we need more of them and that they need to go not only to the point of objection alone, but, as President Wilson said, to revolutionary practices, if necessary, to preserve these blessings that have been built for the people who inhabit America today. And if any truth was ever said, that is true.

Now then, if the verdict of this jury, which I say you have no legal right to render -- there are no proceedings before you that justify your violating the provisions of free speech, -- free press provisions of the Constitution. You will get your instructions on the law from the Court, that is true, but you have no right to substitute his judgment for yours. The law makes it your judgment that shall determine whether you are going to lock these people up for their opinions, or whether you are not. This belongs to you. The Court won't tell you that you can't. He is going to leave it in your lap with his ideas about the law. But the application of that law to the facts that have been presented to you is exclusively your province and is one of the most valuable pillars of liberty that has been guaranteed to us by the Constitution of the United States. There isn't another one that equals it in importance except these things which I am asking you now to recognize and to protect, as good citizens of America.

Don't be afraid of these people that don't agree with

you. Even if you agree with them, it is no sign that they are right or you are right. When you don't agree with them, it is no sign that they are wrong all the way. There are no black human beings and there are no white human beings; we are all gray. We are right in some things and we are wrong in some things, and there isn't a one of us who doesn't have a hundred propositions that we know that we don't thoroughly understand.

What we need is understanding. What does the Bible say? "Get knowledge, but with all thy getting, get understanding." And what does that mean? It means putting your knowledge in its proper setting, with its proper relationship to its surroundings, realizing that there isn't a fact in all the universe that doesn't fit every other fact if you could only understand it. All facts fit together, and the reason we have so much trouble in getting over our understanding to each other is not the differences in facts, but the lack of understanding of facts.

Now then, you have had a long and hard session here. I know it has been hard work sitting here. It was harder for me than usual because I am not used to it, but it is important -- it is extremely important that without the excuse of a war that the government should ask you to violate the plain, definite, actual provisions of the Constitution of the United States. He is my District Attorney; therefore, I have no right to say that I am ashamed that he did it. Now don't put that black mark on

the institution of America that has made America great, the greatest country in the world. It is that freedom and that liberty and these wide open provisions, the rights of human beings to express themselves, that have made America great.

Ladies and Gentlemen, be fair, stand by your own institutions, sustain the Constitution of the United States, and bring in a verdict of not guilty as to every one of these people. They have nothing else coming. I think in some respects some of them are darn foolish. I do, but that is not something they were here tried on. I don't think we ever should be compelled to try out the validity of their doctrine. It is not the issue in this case. The issue is, did they conspire to overthrow the Government of the United States and to commit overt acts to carry out that conspiracy? That is the issue.

I say there is no evidence here that has led to the indictment.

Thank you for your kind consideration. I will submit the matter to you and you will hear, of course, from the Government. They may explain why they haven't indicted Karl Marx. I don't know whether they have any explanation.

I thank you very cordially, ladies and gentlemen, and my colleagues, I am sure, appreciate the very careful consideration that you have given to the consideration of this case, and that goes to the Court, too.

THE COURT: Ladies and Gentlemen, tomorrow is Saturday.

We will start in tomorrow morning at 9:30. This case, I hope, will be in your hands not later than the noon recess.

You will keep in mind, please, the admonitions of the Court, and we will now recess until 9:30 tomorrow morning.

(Whereupon at 4:50 o'clock P. M., a recess was regularly taken until 9:30 o'clock A. M., November 29, 1941.)